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February 21, 2002

FILE NO. 026805-0001

**VIA FEDEX**

CALIFORNIA ENERGY COMMISSION  
DOCKET UNIT, MS-4  
Attn: Docket No. 97-AFC-1C (C1)  
1516 Ninth Street  
Sacramento, California 95814-5512

Re: Complaint of Gary Ledford on HDPP Water Issues  
California Energy Commission Docket No. 97-AFC-1C (C1)

Dear Sir/ Madam:

Pursuant to California Energy Commission Siting Regulation §1209(c) and §1209.5, enclosed herewith for filing please find an original and twelve (12) copies of Respondent HDPP's Reply to Ledford Petition for Review of Committee Ruling; Respondent HDPP's Comments on Proposed Decision of the Committee.

Please note that the enclosed document was filed today via electronic transfer (e-mail) to your attention.

Very truly yours,



Paul E. Kihm  
Senior Paralegal

Enclosure

cc: Michael J. Carroll, Esq. (w/ encl.)

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5 High Desert Power Project, LLC

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7  
8 BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT  
9 COMMISSION OF THE STATE OF CALIFORNIA

10  
11 In the Matter Of:

97-AFC-1-1C (C1)

12 Complaint of Gary Ledford on High Desert  
Power Project Water Issues

**RESPONDENT HDPP'S REPLY TO  
LEDFORD PETITION FOR REVIEW OF  
COMMITTEE RULING; RESPONDENT  
HDPP'S COMMENTS ON PROPOSED  
DECISION OF THE COMMITTEE**

1 **I. Summary**

2 Respondent, High Desert Power Project, LLC ("HDPP"), hereby responds to  
3 Complainant's January 23, 2002 Petition for Review (the "Petition") of portions of the  
4 Committee's January 14, 2002 Ruling on the Pleadings (the "Committee Ruling"). In addition,  
5 HDPP hereby provides its comments on the proposed decision of the Committee issued on  
6 January 29, 2002 (the "Proposed Decision"). The Committee Ruling and Proposed Decision  
7 were issued following a prehearing conference held on January 14, 2002 in connection with a  
8 Complaint filed by Mr. Gary Ledford on October 11, 2001 alleging noncompliance with certain  
9 Conditions of Certification contained in the Commission's final decision on the High Desert  
10 Power Project (the "Project") (97-AFC-01).

11 **II. Procedural Background**

12 The Project is a 720-megawatt natural gas fired electrical power plant located at a  
13 site on the former George Air Force Base in the City of Victorville. Commission Decision, at 1.<sup>1</sup>  
14 An application for certification of the Project was submitted to the Commission on June 30, 1997  
15 and deemed complete on December 3, 1997. Id. at 5. In January of 1999, after one and a half  
16 years of review, the Commission staff issued its assessment of the Project. Id. at 7 Evidentiary  
17 hearings on the Project commenced in September of 1999 and extended over five days. Id. The  
18 Committee issued its proposed decision on the Project on December 15, 1999. Id. A public  
19 hearing on the proposed decision was held on January 27, 2000. Id. A sixth public evidentiary  
20 hearing was held on February 18, 2000, and a revised proposed decision was issued by the  
21 Committee on March 31, 2000. Id. The Commission adopted the revised proposed decision on  
22 May 3, 2000.

23 As approved, the Project will use State Water Project ("SWP") water for cooling  
24 and makeup water needs. The SWP water will be conveyed to the Project site via a 24-inch  
25 diameter, two and one-half mile long, pipeline (the "Northern Pipeline"), which would

26 \_\_\_\_\_  
27 <sup>1</sup> All references herein to the "Commission Decision" are to the Commission Decision,  
28 Application for Certification for the High Desert Power Project, High Desert Power Project,  
LLC, Docket No. 97-AFC-1, May 2000.

1 interconnect with the Mojave River pipeline. The SWP water would either be used directly at  
2 the power plant, or after treatment at the power plant's water treatment facility, be injected for  
3 storage through series of wells located approximately six miles from the Project. Water would  
4 be conveyed from the treatment plant to the well field by a six and one-half mile long pipeline  
5 (the "Southern Pipeline"). The creation of the water bank will allow HDPP to procure SWP  
6 when it is available, and store it for later use in the event of an interruption in availability of  
7 SWP water. In the event of such an interruption, the stored water would be pumped and returned  
8 to the power plant for cooling purposes.

9 To implement the above-described water plan, the City of Victorville, on behalf  
10 of HDPP, has applied to the Mojave Water Agency ("MWA") (in its capacity as wholesale  
11 supplier) for SWP water for the Project. HDPP has contracted with the City of Victorville for  
12 delivery of the SWP water. The Victor Valley Water District ("VVWD") has contracted with the  
13 MWA (in its capacity as Watermaster) to store the SWP water in the aquifer (the "Storage  
14 Agreement"). Finally, VVWD has contracted with HDPP to allow HDPP to use VVWD's  
15 facilities to inject and withdraw the stored SWP water (the "Aquifer Storage and Recovery  
16 Agreement" or "ASRA")

17 The Project's water plan was analyzed extensively during the certification  
18 proceedings, and the Commission Decision specifically addressed many of the issues raised in  
19 the Complaint. Mr. Ledford himself concedes that "[t]he WATER issue was the most highly  
20 contested area in these proceedings." *See* Motion to Show Cause And Compel Compliance With  
21 Conditions, Sept. 28, 2001, at 5. Even a cursory review of the record reveals that each of these  
22 areas was exhaustively analyzed. As stated by Mr. Steve Larson, Executive Director of the  
23 Commission, in a September 10, 2001 letter to Mr. Harold Singer, Executive Officer of the  
24 California Regional Water Quality Control Board, Lahontan Region (Exhibit A<sup>2</sup>): "The nearly  
25 three-year review process that resulted in the certification of the High Desert Power Project was  
26

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27 <sup>2</sup> References to documents identified as Exhibits A – W are to "Exhibits In Support of HDPP's  
28 Answer To Complaint" filed on January 7, 2002.

1 one of the most exhaustive conducted by the Energy Commission. Soil and Water Resources  
2 received intensive scrutiny during our HDPP review process. All aspects of the water injection  
3 and supply system were scrutinized in detail, and the result was expressed in the Soil and Water  
4 Resources Conditions of Certification for the project.”

5 Throughout these proceedings, Mr. Ledford was an active participant. As an  
6 intervenor, Mr. Ledford presented extensive testimony himself, and called several other  
7 witnesses in an attempt to support his position. *See* Hearing Transcripts, dated 9/16/99, 9/30/99,  
8 10/7/99, 10/8/99, 1/27/00 and 2/18/00. Mr. Ledford also conducted extensive cross-examination  
9 of HDPP’s witnesses and various government agency witnesses. *Id.* Mr. Ledford’s presentation  
10 of evidence and cross-examination of witnesses comprise 392 pages in the hearing transcripts.  
11 *Id.* Of the 176 exhibits sponsored by all of the parties during the evidentiary hearings, 53 of  
12 them were sponsored by Mr. Ledford. *See* Commission Decision, Appendix C. Documents filed  
13 by Mr. Ledford and posted on the Commission’s web site comprise another 487 pages. *See*  
14 Energy Commission Website. Unsatisfied with the Commission’s decision, Mr. Ledford  
15 unsuccessfully petitioned the Commission to reconsider its decision. Still unsatisfied, Mr.  
16 Ledford sought review of the Commission’s decision in the California Supreme Court. The  
17 Court summarily denied review of the Commission’s approval of the Project in August 2000.  
18 Almost all of Mr. Ledford’s filings raise the same issues that are raised in the Complaint. To say  
19 that Mr. Ledford has “had his day in court” is an understatement of monumental proportions.

20 In October of 2001, Mr. Ledford filed three pleadings: i) the Complaint that is the  
21 subject of these proceedings; ii) a “Motion to Show Cause and Compel Compliance with  
22 Conditions”; and iii) a “Request for Investigation To Determine Whether Certification Was  
23 Granted Based on Applicant’s Fraud; Perjured Testimony; Deceit; or Bad Faith.” By Order  
24 dated November 9, 2001, the Chairman of the Commission dismissed the latter two pleadings.  
25 *See* Order Dismissing the Request for Investigation and Motion to Show Cause, Nov. 9, 2001  
26 (Exhibit C). Thus, the only pleading before the Commission is the Complaint.

27 In an accompanying Order also issued on November 9, 2001, and a subsequent  
28 Order issued on December 5, 2001, the Chairman of the Commission and the Committee,

1 respectively, limited the Commission's review of the Complaint to HDPP's compliance with  
2 three discrete categories of Conditions of Certification.<sup>3</sup> The specific allegations that were the  
3 subject of the Committee's review are as follows: i) HDPP's water treatment facilities are bigger  
4 than necessary for the power plant, and additional water will be treated by those facilities for  
5 non-HDPP purposes (Conditions 1e, 17(1), 19); ii) HDPP is not using the proper type of water  
6 treatment facilities, and those facilities will fail to provide water "approaching background water  
7 quality levels" (Conditions 12 and 13); and iii) HDPP has failed to provide to the Commission  
8 various documents concerning water use and supply (Conditions 2, 11, 12, 17, 19). *See* Notice  
9 of Complaint Proceeding and Order Establishing Scope of Proceeding and Setting Schedule,  
10 Nov. 9, 2001, at 3 (Exhibit D); *see also* Notice of Evidentiary Hearing and Order Setting  
11 Schedule for Filing Answer and Witness Lists, Dec. 5, 2001, at 3 (Exhibit E).

12               On December 28, 2001, the Committee issued a Notice of Prehearing Conference  
13 and Order to Produce Compliance Documents. On January 7, 2001, HDPP filed its Answer to  
14 the Complaint. On January 11, 2002, HDPP filed its Position Statement in response to the  
15 December 28, 2001 Order. On January 14, 2002, the Committee conducted a prehearing  
16 conference, at which all parties appeared. During the January 14, 2002 prehearing conference,  
17 the Committee cancelled the evidentiary hearing that had been previously scheduled. Also on  
18 January 14, 2002, the Committee issued the Committee Ruling, which is the subject of the  
19 pending Petition, dismissing several of the allegations in the Complaint. On January 29, 2002,  
20 the Committee issued its Proposed Decision.

21               Construction of the Project commenced in May 2001. *See* Declaration of Andy  
22 Welch, Jan. 7, 2002 ("Welch Decl.") (Exhibit B), ¶ 2. The Project is being constructed  
23 according to the designs and specifications reviewed and approved by the Commission. *Id.*  
24 HDPP will begin its groundwater recharge program in September 2002, approximately nine  
25 months prior to the expected commencement of commercial operation in the Spring of 2003.

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26  
27  
28 <sup>3</sup> All references to "Conditions" herein refer to Soil & Water Conditions placed on the Project  
in the Commission Decision.

1 Welch Decl., ¶ 6 (Exhibit B).

2 **III. Discussion**

3 **A. The Committee Acted Within The Scope Of Its Discretion and Appropriately**  
4 **Issued The Committee Ruling And The Proposed Decision.**

5 In the Petition, Mr. Ledford alleges that various actions of the Committee,  
6 particularly the decision not to conduct an evidentiary hearing, amount to an abuse of discretion.  
7 Petition at 2, 8 and 10. Contrary to Mr. Ledford's allegations, the actions of the Committee are  
8 well within the discretion granted by the regulations that govern these proceedings.

9 Title 20 of the California Code of Regulations, Section 1203(b), grants broad  
10 powers to the presiding member of a committee to "Regulate the conduct of the proceedings and  
11 hearings, including, but not limited to, disposing of procedural requests, *admitting or excluding*  
12 *evidence, receiving exhibits*, designating the order of appearance of persons making oral  
13 comments or testimony and continuing the hearings." (Emphasis added.) Section 1203(e) grants  
14 specific authority to the presiding member to "Cancel a scheduled hearing or meeting." Thus,  
15 the Committee's decisions not to admit additional evidence or receive additional exhibits through  
16 the process of an evidentiary hearing, and the decision to cancel the evidentiary hearing  
17 altogether, were well within the explicit authority granted to the presiding member pursuant to  
18 Section 1203.

19 Mr. Ledford also suggests that the prehearing conference was not the appropriate  
20 forum for the Committee to take the actions that it did. Petition at 1. This allegation ignores the  
21 broad purposes of prehearing conferences, as set forth in Title 20 of the California Code of  
22 Regulations, Section 1208. Section 1208 states that "The presiding member or hearing officer  
23 may hold a conference with the parties, the public adviser, the general counsel, and any other  
24 persons interested in the proceeding, at any time he deems necessary, for the purpose of  
25 *formulating the issues*, organizing the questioning of witnesses, *determining the number of*  
26 *witnesses*, providing for the exchange of prepared statements, and *such other matters as may*  
27 *expedite the orderly conduct of the proceeding.*" (Emphasis added.) In addition, Section  
28 1224(b) states "The presiding member may require that prepared written testimony or other

1 evidence be submitted in advance of any hearing, for the purpose of facilitating the orderly  
2 consideration of issues at the hearing.”

3           The conduct of the prehearing conference was directly in accordance with  
4 Sections 1208 and 1224. This was a prehearing conference, at which the Committee accepted  
5 stipulations as to facts in the matter, asked the parties to identify the evidence that they intended  
6 to introduce at the hearing, eliminated certain issues based on the lack of evidentiary support in  
7 the record, and determined whether there were issues necessitating a future hearing. Contrary to  
8 Mr. Ledford's position in his Petition, Sections 1208 and 1224 specifically authorize the  
9 Committee to take the actions reflected in the Committee Order and the Proposed Decision at a  
10 prehearing conference.

11           In similar cases, the courts have upheld the rendering of a decision by an  
12 administrative body without the conduct of additional evidentiary hearings. *See Cozens v. New*  
13 *Car Dealers Policy & Appeals Bd.*, 52 Cal.App. 3d 21. In *Cozens*, the court affirmed the trial  
14 court's denial of the petition of the Director of the Department of Motor Vehicles for a writ of  
15 mandate that would have compelled the New Car Dealers Policy and Appeals Board to set aside  
16 its order modifying the Director's decision revoking a dealer's license. Although authorized to  
17 do so, the Board did not hold an evidentiary hearing, but based its decision on the record  
18 compiled by the department and the briefs of the parties. In response to the Director's argument  
19 that a hearing was required, the court stated that “there is no statutory requirement that the Board  
20 hold an evidentiary hearing. As we have previously pointed out, the Board can act upon the  
21 administrative record of the Department and the briefs of the parties alone.” *Id.* at 28. The court  
22 went on to hold that “We find nothing arbitrary or capricious in the Board's order and we shall  
23 therefore affirm the judgment of the trial court denying the writ of mandate.” *Id.*

24           In conclusion, the actions taken by the Committee at the prehearing conference,  
25 and its decision to issue the Committee Order and Proposed Decision without further evidentiary  
26 hearings, were well within the scope of authority granted by the controlling regulations. Such  
27 actions did not amount to an abuse of discretion, as alleged by Mr. Ledford.

28



1           **B.       The Petition For Review Is Without Merit And The Commission Should**  
2           **Uphold The Committee Ruling Of January 14, 2002.**

3                       In certain respects, the Committee Ruling is superceded by the Proposed  
4           Decision, which addresses all of the issues covered by the Committee Ruling. Nevertheless,  
5           since it is the Commission's intention to consider the Committee Ruling and the Proposed  
6           Decision as related, but independent, matters, HDPP hereby responds to the allegations in the  
7           Petition.

8                       The Committee Ruling dismissed the allegations in the Complaint concerning  
9           noncompliance with Conditions of Certification 2, 13 and 19 without prejudice on the basis that  
10          the deadlines for compliance with those Conditions have not yet passed. Committee Ruling at 1.  
11          The Committee Ruling dismissed the allegations in the Complaint concerning noncompliance  
12          with Condition of Certification 1(e) with prejudice by affirming the finding in the Commission  
13          Decision that the Project's water facilities are appropriately sized, and by finding that HDPP has  
14          complied with the verification by submitting final design drawings as required. The Committee  
15          Ruling dismissed the allegations in the Complaint concerning noncompliance with Condition of  
16          Certification 17(1) subject to submittal of a signed codicil to the ASRA, which would  
17          incorporate the final Conditions of Certification and explain any discrepancies between the  
18          ASRA and the final Conditions of Certification.

19                      The Petition challenges the Committee Ruling as it relates to Conditions of  
20          Certification 1(e), 17(1) and 19. The Petition does not appeal the Committee Ruling as it relates  
21          to Conditions 2 and 13. Having failed to appeal the Committee Ruling on Conditions 2 and 13  
22          within the timeframe required by Title 20 California Code of Regulations Section 1215(b), Mr.  
23          Ledford is now time barred from appealing the Committee Ruling as it relates to those issues.  
24          Furthermore, Mr. Ledford agreed to the dismissal of the allegations related to noncompliance  
25          with Condition 13 during the January 14, 2002 prehearing conference. *See* Jan. 14, 2002  
26          Hearing Transcript, at 25. Thus, in determining whether or not to reverse the Committee Ruling,  
27          the Commission need only consider Conditions 1(e), 17(1) and 19.

1                   1.       Condition of Certification 1(e)

2                   Complainant appeals the Committee's dismissal of allegations concerning  
3 noncompliance with Condition of Certification 1(e). (Petition at 3). As set forth in the  
4 Committee Ruling, the Committee found that during the certification proceedings, the  
5 Commission considered and rejected Complainant's assertion that the 24-inch water pipeline is  
6 "oversized." (Committee Ruling at 1). The Committee pointed out that the Commission  
7 specifically concluded that the "design capacity of the project pipelines is required to meet  
8 project needs." (Id., citing Commission Decision at page 227). Finally, the Committee ruled that  
9 HDPP had met the requirements of the verification by submitting its final design drawings in a  
10 timely manner. (Id.)

11                   In the Complaint, and during the prehearing conference, Mr. Ledford asserted that  
12 the Commission had ignored evidence that he and Commission staff presented during the  
13 certification process in support of the allegation that the water supply facilities are oversized.  
14 (Complaint at 8:15-17; 1/14/02 RT at 33:4-9). Mr. Ledford makes this assertion once again in  
15 the Petition. (Petition at 3). Contrary to Mr. Ledford's assertion, the Commission found that  
16 "[t]he evidence simply does not support Mr. Ledford's conjecture. Direct, uncontradicted  
17 testimony establishes that the design capacity of Project pipelines is required to meet Project  
18 needs. (Commission Decision, at 227 (citations omitted)). Notwithstanding this specific  
19 determination by the Commission, which was affirmed in the Committee Ruling, Mr. Ledford  
20 continues to assert that evidence supporting a contrary conclusion has been ignored. Yet, Mr.  
21 Ledford has failed to even identify this supposed evidence.

22                   Mr. Ledford goes on to assert that HDPP has failed to submit final design  
23 drawings for the Project's water supply facilities, as required by the verification for Condition  
24 1(e). (Petition at 3) Contrary to Mr. Ledford's allegation, final design drawings were submitted  
25 to the Compliance Project Manager on March 27, 2001. (Exhibit L). This fact was confirmed by  
26 Commission Staff during the pre-hearing conference. (1/14/02 RT at 41:2-3).

27                   Finally, Mr. Ledford asserts that the final design drawings submitted by HDPP  
28 prove that the water treatment plant is oversized. (Petition at 4). In support of this assertion, Mr.

1 Ledford cites three propositions. Curiously, the first two propositions contradict each other. Mr.  
2 Ledford first contends that the water treatment plant is designed to process up to 11,000 acre feet  
3 of water per year - a figure in excess of Project needs. (Petition at 4). In the next paragraph, Mr.  
4 Ledford asserts that the treatment plant will only be able to produce 3,500 acre feet per year - in  
5 Mr. Ledford's words, a figure "far short" of Project needs. (Petition at 4). The third proposition  
6 relates to water treatment methodology, and has nothing to do with the size of the water  
7 treatment plant. These contradictory and/or irrelevant statements are indicative of the  
8 "evidence" that Mr. Ledford has sought to present on this issue. As the Commission found, and  
9 the Committee affirmed, the only relevant evidence on this issue indicates that the Project's  
10 water supply facilities have been properly sized.

11 In short, Mr. Ledford's claims amount to a restatement of arguments that he has  
12 made on numerous occasions in the past, and which have been rejected by the Commission. The  
13 claims are contrary to the evidence in the record of the certification proceedings, unsupported by  
14 any evidence identified subsequent to the proceedings, and in some respects, illogical. There is  
15 absolutely no basis for reversing the Committee Ruling on this issue.

16 2. Condition of Certification 17(1)

17 Mr. Ledford appeals the Committee's dismissal of allegations concerning  
18 noncompliance with Condition of Certification 17(1). (Petition at 5). The Committee found that  
19 HDPP timely filed the required ASRA in February 2000 when it was received into the  
20 evidentiary record of the certification proceedings as Exhibit 145. (Committee Ruling at 1). The  
21 Committee conditioned its dismissal of these allegations on the submittal of a codicil to the  
22 ASRA incorporating the final Conditions of Certification. (Id.)

23 Incredibly, notwithstanding the fact that the document was admitted into evidence  
24 during the certification proceedings, Mr. Ledford continues to contend that "the record is devoid  
25 of such a document." (Petition at 5). In support of this allegation, Mr. Ledford points to an  
26 internal Commission staff memo, which raised a question about whether the ASRA incorporated  
27 the final Conditions of Certification, and testimony from the evidentiary hearings regarding the  
28 impact that modifications to the Conditions of Certification might have on the ASRA. (Petition

1 at 5-6). What Mr. Ledford ignores is that subsequent to both of these events, the parties to the  
2 ASRA confirmed in writing to the Commission that the ASRA is governed by the final  
3 Conditions, and that the parties intended to be bound by the final Conditions. (Exhibit N and  
4 Exhibit O). Furthermore, on January 18, 2002, HDPP docketed the requested codicil with the  
5 Commission. There is no credible claim that HDPP is in violation of Condition 17(1) and the  
6 Committee Ruling should be upheld in this regard.

7 3. Condition of Certification 19

8 Mr. Ledford appeals the Committee's dismissal of allegations concerning non-  
9 compliance with Condition of Certification 19. (Petition at 8). The Committee determined that  
10 the deadline for compliance with Condition 19 had not yet occurred, and the allegations were  
11 unripe.

12 Mr. Ledford asserts that the Committee has "constructive notice" that a violation  
13 is imminent. This assertion is based on Mr. Ledford's speculation about VVWD's desires  
14 regarding use of the Project's water treatment facilities. Mr. Ledford's speculation is premised  
15 on an application filed by VVWD with the Watermaster to inject and store water in the regional  
16 aquifer in an amount greater than that which is required for the Project. As Mr. Ledford  
17 concedes, however, that application has been withdrawn, and thus is not any indication  
18 whatsoever of VVWD's future plans. Furthermore, a revised water storage agreement, reflecting  
19 only the needs of the Project, was conditionally approved by VVWD on February 5, 2002, and  
20 finally approved on February 19, 2002. The Watermaster conditionally approved the agreement  
21 on February 6, 2002, and is scheduled to finally approve it on February 27, 2002.

22 Finally, even if VVWD did have plans to store water in the aquifer beyond that  
23 which is required for the Project, and even if VVWD did desire to use the Project's facilities to  
24 treat that water prior to injection, such plans and desires do not amount to an impending violation  
25 of the Conditions of Certification. In fact, Condition 19 specifically acknowledges that VVWD  
26 might have such plans, and makes it clear that any use of the Project's facilities beyond that  
27 specifically allowed by the Commission must be subject to independent review.

28 Thus, Mr. Ledford's allegations are based on three assumptions: i) that VVWD

1 has plans to use the Project's treatment facility; ii) that such use will be contrary to the  
2 Conditions; and iii) that HDPP will allow such use. Despite repeated inquiries from the  
3 Committee at the pre-hearing conference regarding what evidence he intended to introduce in  
4 support of these assumptions, Mr. Ledford failed to do so. (1/14/02 RT at 73:18-23 ). The  
5 Committee Ruling must be upheld as to this issue.

6 4. Discovery Matters

7 Mr. Ledford asserts that he is reserving the right to amend his appeal upon final  
8 rulings on pending discovery matters before the Committee, including discovery motions,  
9 motions to clarify and motions to issue subpoenas. The Committee issued two Orders in  
10 response to Mr. Ledford's discovery requests. On December 14, 2001, the Committee issued an  
11 Order in Lieu of Subpoena Duces Tecum Directing Energy Commission Staff to Produce  
12 Documents and Prospective Witnesses. On December 18, 2001, the Committee issued an Order  
13 Clarifying Previous Order in Lieu of Subpoena Duces Tecum. Having failed to appeal either of  
14 these Orders to the Commission within the timeframe specified by Title 20 California Code of  
15 Regulations Section 1215(b), Mr. Ledford has waived his right of appeal as to discovery matters,  
16 and is barred from raising such issues in any subsequent petition.

17 C. **The Proposed Decision Is Supported By The Evidence In The Record And**  
18 **Should Be Adopted By The Commission**

19 Subject to two minor clarifications, as detailed below, HDPP concurs with the  
20 Proposed Decision, including the Findings and Conclusions, and urges the Commission to adopt  
21 it as the final decision.

22 The first clarification relates to Condition 12. As the Proposed Decision points  
23 out, the deadline for filing the water treatment and monitoring plan required by Condition 12 has  
24 not yet occurred. Proposed Decision at 13. As HDPP understands the Proposed Decision,  
25 because the deadline has not yet passed, the allegations concerning Condition 12 are not entirely  
26 ripe, and therefore the Committee proposes to dismiss these allegations *without prejudice*, as  
27 opposed to *with prejudice*. However, the November 9, 2001 and December 5, 2001 Orders  
28 issued by the Chairman of the Commission and the Committee, respectively, indicated that the

1 substantive merits of Condition 12 would be addressed regardless of whether or not the date for  
2 submittal of the plan had passed.

3           And indeed, the Proposed Decision does address the substantive merits of  
4 Condition 12. The Committee concluded that the water treatment and monitoring plan set forth  
5 in the various documents filed with the Lahontan Regional Water Quality Control Board in  
6 connection with the Conditional Waiver of Waste Discharge Requirements, and considered by  
7 the Committee (Exhibits P, Q, R, S and U), meets the substantive requirements set forth in  
8 Condition 12. Proposed Decision at 10-13. This conclusion is reflected in item 8 of the Findings  
9 and Conclusions of the Proposed Decision, which states that submittal of the approved  
10 Conditional Waiver of Waste Discharge Requirements will satisfy the requirements of  
11 Conditions 11 and 12. The plan, as set forth in the Exhibits considered by the Committee, was  
12 approved by the Regional Board on February 14, 2002.

13           Having undertaken consideration of the substantive merits of Condition 12, and  
14 concluded that the allegations in the complaint related to those substantive merits are without  
15 support, those allegations should be dismissed *with prejudice*. In other words, while HDPP may  
16 be subject to future enforcement proceedings should it fail to submit the water treatment and  
17 monitoring plan on a timely basis, it should not be subject to future enforcement proceedings  
18 alleging noncompliance with the substantive requirements of Condition 12. HDPP requests that  
19 the final decision reflect this clarification and that the substantive allegations related to Condition  
20 12 be dismissed *with prejudice*.

21           The second clarification relates to numbered paragraph 2 in the Findings and  
22 Conclusions. This paragraph includes a very broad statement regarding the prohibition of use of  
23 the Project's water treatment facilities for non-Project purposes. However, as discussed on page  
24 7 of the Proposed Decision, Condition 19 sets forth conditions under which the VVWD could  
25 use treated and injected water for non-Project purposes, namely (1) a separate water storage  
26 agreement with the Watermaster for that purpose, (2) a separate CEQA review and (3) that it not  
27 increase the Soil & Water-17.1 baseline. The Commission also expressly found that the required  
28 separate water storage agreement does not yet exist.

1 Presumptively, the wording of Finding and Conclusion 2 presumes the stated  
2 present condition of no separate water storage agreement in stating the prohibition against use of  
3 "...the [P]roject's water treatment facilities for non-HDPP purposes." Read literally, however,  
4 the wording of Finding and Conclusion 2 fails to recognize the conditions stated in Condition 19  
5 under which such use would be permissible.

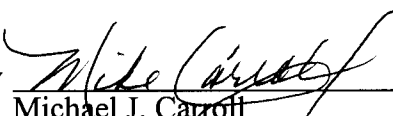
6 HDPP, therefore, respectfully requests that Finding and Conclusion 2 be clarified  
7 to recognize the express conditions of Condition 19 under which such use would be permissible.  
8 This could be accomplished by simply adding the phrase "*except as permitted by Condition of*  
9 *Certification Soil and Water 19*" to the end of the Finding and Conclusion.

#### 10 **IV. Conclusion**

11 The Committee Ruling and Proposed Decision are supported by the evidence in  
12 the record of the certification proceedings, and the filings of the parties in this complaint  
13 proceeding. Despite repeated opportunities to do so, Mr. Ledford has failed to identify any  
14 evidence which, if admitted, would support his allegations. Under these circumstances, further  
15 proceedings as to the matters raised in the Complaint would amount to a waste of the resources  
16 of the Commission and its staff, and an unfair burden on HDPP. The Committee acted  
17 appropriately and within its discretion. The Petition should be dismissed and the Committee  
18 Ruling should be upheld in its entirety. The Proposed Decision should be adopted as the Final  
19 Decision of the Commission with the clarifications requested above related to Condition 12 and  
20 Finding and Conclusion 2.

21  
22  
23 Dated: February 21, 2002

24 LATHAM & WATKINS

25  
26 By   
27 Michael J. Carroll  
28 Attorneys for Respondent  
High Desert Power Project, LLC

**STATE OF CALIFORNIA**

**Energy Resources  
Conservation and Development Commission**

In the Matter of:	)	Docket No. 97-AFC-1C (C1)
	)	
COMPLAINT OF GARY LEDFORD ON	)	<b>PROOF OF SERVICE</b>
HIGH DESERT POWER PROJECT	)	[Revised 12/28/01]
WATER ISSUES	)	
	)	
	)	

I, Paul Kihm, declare that on February 21, 2002, I distributed copies of the attached:  
**RESPONDENT HDPP'S REPLY TO LEDFORD PETITION FOR REVIEW OF  
COMMITTEE RULING; RESPONDENT HDPP'S COMMENTS ON PROPOSED  
DECISION OF THE COMMITTEE**

☒ via electronic transfer (e-mail) and by depositing copies with FedEx overnight mail delivery service at Costa Mesa, California with delivery fees thereon fully prepaid and addressed to the following:

DOCKET UNIT

CALIFORNIA ENERGY COMMISSION  
DOCKET UNIT, MS-4  
Attn: Docket No. 97-AFC-1C (C1)  
1516 Ninth Street, MS-4  
Sacramento, California 95814-5512  
Email: docket@energy.state.ca.us

☒ via electronic transfer (e-mail) and by depositing copies in the United States mail at Costa Mesa, California with first class postage thereon fully prepaid and addressed to the following:

COMPLAINANT

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jessranch@attglobal.net



HIGH DESERT POWER PROJECT  
CEC Docket No. 97-AFC-1C (C1)

**PROOF OF SERVICE LIST**

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HIGH DESERT POWER PROJECT  
CEC Docket No. 97-AFC-1C (C1)

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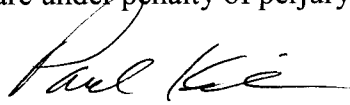
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HIGH DESERT POWER PROJECT  
CEC Docket No. 97-AFC-1C (C1)

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I declare under penalty of perjury that the foregoing is true and correct.



---

Paul Kihm